

Before Trial : Anticipating Defenses

A. Proof Beyond a Reasonable Doubt

- a. Presumption of Innocence (76-1-501)
 - i. Defendant presumed innocent until each element proven beyond a reasonable doubt
 - ii. Elements of offense (76-1-501(2))
 - 1. Conduct or results of prohibited conduct
 - 2. Culpable mental state required
- b. Familiarity with statutory elements
 - i. Mens rea
 - 1. Check for definitions and annotations
 - ii. Actus reus
 - 1. Check for definitions and annotations
- c. Model Utah Jury Instruction - CR103 Proof Beyond a Reasonable Doubt
 - i. prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases, the prosecution's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find (him) (her) guilty. If, on the other hand, you think there is a real possibility that (he) (she) is not guilty, you must give (him) (her) the benefit of the doubt and find (him) (her) not guilty.

B. Familiarity with Statutory Defenses

- a. Statute of Limitations
 - i. Offenses for which prosecution may be commenced at any time (76-1-301)
 - ii. Time limitations for prosecutions of offenses (76-1-302)
- b. Affirmative defenses
 - i. Evidence shall be presented by defendant (76-1-504)
 - ii. Compulsion (76-2-302)
 - iii. Entrapment (76-2-303)
 - iv. Ignorance or mistake of fact or law (76-2-304)
 - v. Mistake as to victim's age not a defense (76-2-304.5)
 - vi. Mental illness (76-2-305)
 - vii. Voluntary intoxication (76-2-306)
 - viii. Voluntary termination of efforts prior to offense (76-2-307)

- c. Justification (76-2-401)
 - i. Force in defense of person (76-2-402)
 - ii. Force in arrest (76-2-403)
 - iii. Peace officer's use of deadly force (76-2-404)
 - iv. Force in defense of habitation (76-2-405)
 - v. Force in defense of property (76-2-406)
 - 1. Affirmative defense
 - vi. Deadly force in defense of persons on real property (76-2-407)
- d. Child Abuse
 - i. Defenses contained in 76-5-109(7)
- e. Homicide
 - i. Unborn child (76-5-201)
 - ii. Aggravated Murder (76-5-202(4))
 - iii. Murder (76-5-204(4))
 - iv. Special Mitigation (76-5-205.5)
- f. Custodial interference (76-5-303(6))
- g. Kidnapping (76-5-305)
- h. Criminal trespass (76-6-206(4))
- i. Offenses against property (76-6-402(3))
- j. Alibi (77-14-2)

C. Mental State Defenses

- a. 77-14-3
 - i. Party intending to call expert re mental state shall give notice at least 30 days before trial
 - ii. If defense expert opinion is based upon personal contact, interview, or observation of the defendant, the opposing party has a corresponding right to have its own expert examine the defendant
- b. 77-14-4
 - i. Defense of insanity or diminished capacity requires written notice of intention to claim the defense at least 30 days before trial
 - ii. Court shall order the Department of Human Services to examine the defendant and investigate mental condition
 - iii. If the defendant fails to cooperate, the defense is barred from presenting expert testimony relating to defense of mental illness
 - iv. Remember 76-2-305(3)
 - 1. Person who voluntarily ingested alcohol or controlled substances is not excused from criminal responsibility on the basis of mental illness if the alcohol or substance caused, triggered, or substantially contributed to the mental illness

D. Experts

- a. Rule 702
 - i. Witness who is qualified as an expert by knowledge, skill, experience, training, or education

- ii. May testify in form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue
 - b. Notice Requirements (77-17-13)
 - c. State v. Clopten 2009 UT 84
 - i. Eyewitness expert testimony should not be excluded as intruding on the province of the jury or as an impermissible lecture
 - ii. Rule 702 now recognizes that it might be important in some cases for an expert to educate the factfinder about general principles, without attempting to apply these principles to the specific facts of the case
 - d. State v. Sheehan 2012 UT App 62
 - i. When trial court rules that expert's testimony is reliable, this does not necessarily mean that contradictory expert testimony is unreliable
 - ii. Broad enough to permit testimony that is the product of competing principles or methods in the same field of expertise
 - iii. Contrary and inconsistent opinions may simultaneously meet the threshold; it is for the factfinder to reconcile – or chose between – the different opinions
- E. State's Motion for Discovery
- a. Rule 16(c)
 - i. Defense shall disclose any item of evidence which court determines on good cause shown should be made available to prosecutor
 - b. State v. Spry 2001 UT App 75
 - i. Good cause only requires a showing that disclosure of requested evidence is necessary to the proper preparation of the defense
 - ii. Showing made when trial court is apprised of the fact that the evidence is material to an issue to be raised at trial